

01 driver's license, and, at the time of the hearing, was attending school to become a medical
02 assistant. (AR 28, 31, 158.) Plaintiff previously worked as a cashier, deliverer, school bus
03 driver, and security guard. (AR 28-33, 44, 142, 160.)

04 Plaintiff filed applications for DIB and SSI in November 2008, alleging disability
05 beginning March 24, 2008. (AR 110-23.) Her applications were denied initially and on
06 reconsideration, and she timely requested a hearing.

07 On August 17, 2010, ALJ M.J. Adams held a hearing, taking testimony from plaintiff
08 and a vocational expert. (AR 23-46.) On September 23, 2010, the ALJ issued a decision
09 finding plaintiff not disabled. (AR 10-18.)

10 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review
11 on December 6, 2011 (AR 1-5), making the ALJ's decision the final decision of the
12 Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

13 **JURISDICTION**

14 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

15 **DISCUSSION**

16 The Commissioner follows a five-step sequential evaluation process for determining
17 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
18 must be determined whether the claimant is gainfully employed. The ALJ took note of
19 plaintiff's employment in 2008 through July 2009, her receipt of unemployment benefits since
20 in or around July 2009, and her testimony that she obtained a waiver permitting her to attend
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22 Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case
Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 school and continue to receive unemployment. (AR 12.) He determined that plaintiff had not
02 engaged in substantial gainful activity since March 24, 2008, the alleged onset date.

03 At step two, it must be determined whether a claimant suffers from a severe impairment.
04 The ALJ determined that plaintiff had medically determinable impairments, including lumbar
05 spine pain, obesity, migraine headaches, and depression. However, upon finding that plaintiff
06 did not have an impairment or combination of impairments that significantly limited, or was
07 expected to significantly limit, plaintiff's ability to perform basic work-related activities for
08 twelve consecutive months, the ALJ concluded that plaintiff did not have a severe impairment
09 or combination of impairments at step two. Given that conclusion, the ALJ did not proceed
10 with the remainder of the sequential analysis, and found plaintiff not disabled from March 24,
11 2008 through the date of the decision. *See Ukolov v. Barnhart*, 420 F.3d 1002, 1003 (9th Cir.
12 2005) ("If a claimant is found to be "disabled" or "not disabled" at any step in the sequence,
13 there is no need to consider subsequent steps.") (quoting *Schneider v. Commissioner of the*
14 *SSA*, 223 F.3d 968, 974 (9th Cir. 2000)).

15 This Court's review of the ALJ's decision is limited to whether the decision is in
16 accordance with the law and the findings supported by substantial evidence in the record as a
17 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
18 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
19 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
20 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
21 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
22 F.3d 947, 954 (9th Cir. 2002).

01 As construed by the Commissioner, plaintiff appears to challenge the ALJ's step two
 02 determination in this matter. She asserts a lack of substantial evidence support for the decision
 03 and the ALJ's failure to properly evaluate the medical records.² The Commissioner argues
 04 that the ALJ's decision is supported by substantial evidence and should be affirmed. For the
 05 reasons described below, the Court agrees with the Commissioner.

06 Plaintiff bears the burden of proving an impairment is disabling. *Miller v. Heckler*, 770
 07 F.2d 845, 849 (9th Cir. 1985). To meet the definition of disability, a claimant must have a
 08 severe impairment preventing work, and the impairment must have lasted or be expected to last
 09 at least twelve months. 20 C.F.R. §§ 404.1505, 404.1509, 416.905, 416.909. *Accord* 42
 10 U.S.C. § 423 (d)(1)(A) (disability means "inability to engage in any substantial gainful
 11 activity by reason of any medically determinable physical or mental impairment . . . which has
 12 lasted or can be expected to last for a continuous period of not less than 12 months[']").

13 At step two of the sequential evaluation process, a claimant must make a threshold
 14 showing that her medically determinable impairments significantly limit her ability to perform
 15 basic work activities. *See Bowen v. Yuckert*, 482 U.S. 137, 145 (1987) and 20 C.F.R. §§
 16 404.1520(c), 416.920(c). "Basic work activities" refers to "the abilities and aptitudes
 17 necessary to do most jobs." §§ 404.1521(b), 416.921(b). "An impairment or combination of
 18 impairments can be found 'not severe' only if the evidence establishes a slight abnormality that

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 20 ² To the extent plaintiff's briefing could be read to contain other arguments (*see* Dkts. 18 & 20),
 21 none of the arguments are raised with any specificity and, as such, do not warrant scrutiny. *See*
 22 *Carmickle v. Commissioner*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to address issues not
 argued with any specificity) (citing *Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d 1145, 1164 (9th
 Cir. 2003) (the court "ordinarily will not consider matters on appeal that are not specifically and
 distinctly argued in an appellant's opening brief").) For instance, while plaintiff implies the existence
 of new and material evidence, she does not point to or provide any such evidence.

01 has ‘no more than a minimal effect on an individual’s ability to work.’” *See Smolen v. Chater*,
02 80 F.3d 1273, 1288-89 (9th Cir. 1996 (quoting Social Security Ruling (SSR) 85-28). “[T]he
03 step two inquiry is a de minimis screening device to dispose of groundless claims.” *Id.* (citing
04 *Bowen*, 482 U.S. at 153-54). An ALJ is also required to consider the “combined effect” of an
05 individual’s impairments in considering severity. *Id.*

06 A diagnosis alone is not sufficient to establish a severe impairment. Instead, a claimant
07 must show that her medically determinable impairments are severe. 20 C.F.R. §§ 404.1520(c),
08 416.920(c). Also, a medical impairment “must be established by medical evidence consisting
09 of signs, symptoms, and laboratory findings, not only by [a] statement of symptoms.” §§
10 404.1508, 416.908. *Accord Ukolov*, 420 F.3d at 1005 (same); SSR 96-4p (same).

11 In this case, the ALJ first described the medical record and rendered his conclusion as to
12 the existence of medically determinable impairments. (AR 13.) The discussion of the
13 medical record included, *inter alia*, the following descriptions: unremarkable/normal imaging
14 results of cervical and lumbar spines, and the diagnosis of mild back sprain; an emergency
15 room record describing the cause of reported migraines as not determined and “‘unspecified’”;
16 records confirming plaintiff’s mood as depressed and affect as constricted, with a prescription
17 for Celexa; and the absence of any imaging or treatment relating to alleged knee pain. (*Id.*)

18 The ALJ next engaged in a credibility analysis. *See Lingenfelter v. Astrue*, 504 F.3d
19 1028, 1036 (9th Cir. 2007) (in assessing credibility, an ALJ must first determine whether a
20 claimant presents “objective medical evidence of an underlying impairment ‘which could
21 reasonably be expected to produce the pain or other symptoms alleged.’”; given presentation of
22 such evidence, and absent evidence of malingering, an ALJ must provide clear and convincing

01 reasons to reject a claimant's testimony) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th
02 Cir. 1991)). He found plaintiff's statements concerning the intensity, persistence, and limiting
03 effects of her symptoms not credible to the extent inconsistent with the finding that plaintiff had
04 no severe impairment or combination of impairments. (AR 15.)

05 In finding plaintiff less than fully credible, the ALJ first found plaintiff's subjective
06 complaints "not reasonably consistent" with the medical evidence:

07 On a number of occasions the claimant's provider noted "no unusual anxiety of
08 evidence of depression with a stable mood. Her memory was "intact" and her
09 judgment, thought processes/content, attention and intellect were all normal.
10 Once the claimant returned to part time work, discussed below, her provider
11 noted a positive "increased affect." As of April 2010, the claimant stated her
12 depression improved and was stable while taking medication; she verified at her
13 hearing that medication was a "great help." She mentioned that "vacation"
14 helped her symptoms too. The record notes, however, that at times the
15 claimant discontinued her medication because she "disliked taking medication,"
16 contributing to any ongoing symptoms.

17 Concerning the claimant's back pain, she explicitly denied radiating pain to her
18 lower extremities. Examinations were generally unremarkable. The
19 claimant's treating provider deemed the claimant's back pain "mild" and
20 advised conservative treatment, such as Tylenol and ibuprofen along with
21 heat/ice, stretching and physical therapy. As stated above, imaging did not
22 identify any significant abnormalities and no surgical intervention was advised.
According to the record, the claimant's back pain improved with physical
therapy.

Likewise, despite complaints of migraine headaches a CT scan of the claimant's
head was normal. A neurological examination while at the emergency
department was unremarkable. According to the record, the claimant was sent
home from the emergency department without any medication to treat her
migraine headache, indicating her symptoms are not to the degree she is
alleging. Her provider thought stress triggered these headaches and counseling
as well as smoking cessation was the recommended treatment.

21 (*Id.*, internal citations to record omitted.) "While subjective pain testimony cannot be rejected
22 on the sole ground that it is not fully corroborated by objective medical evidence, the medical

01 evidence is still a relevant factor in determining the severity of the claimant's pain and its
02 disabling effects." *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); SSR 96-7p
03 (same). Also, "[c]ontradiction with the medical record is a sufficient basis for rejecting the
04 claimant's subjective testimony." *Carmickle v. Comm'r of SSA*, 533 F.3d 1155, 1161 (9th Cir.
05 2008) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)). As such, the ALJ here
06 appropriately relied on inconsistency with the medical record.

07 The ALJ next pointed to the fact that plaintiff has worked and sought work with her
08 allegedly disabling impairments, inconsistent statements regarding her employment record, and
09 other facts showing the impairments did not prevent her from working and seemed to alleviate
10 her symptoms as "strongly suggest[ing] [her] symptoms would not currently prevent work."
11 (AR 15-16.) In so doing, the ALJ appropriately considered inconsistencies between plaintiff's
12 testimony and both her conduct and work record. *Light v. Social Sec. Admin.*, 119 F.3d 789,
13 792 (9th Cir. 1997).

14 The ALJ also appropriately considered inconsistencies or contradictions between
15 plaintiff's statements and her activities of daily living. *Tonapetyan v. Halter*, 242 F.3d 1144,
16 1148 (9th Cir. 2001); *Thomas*, 278 F.3d at 958-59. The ALJ noted evidence that plaintiff
17 walked for exercise, was taking a test to become a metro bus driver, and sought "out many
18 'hard-to-find resources' to prevent rent/energy, crisis." (AR 16.) The function report plaintiff
19 completed included the following descriptions: getting her children up in the morning,
20 completing her personal hygiene, preparing meals, and helping her children with homework;
21 caring for her five children, including cooking and washing clothes; light cleaning and laundry;
22 getting outside at least once a week; talking with and occasionally having lunch with friends;

01 sometimes attending church; being able to pay attention for a “fairly good” amount of time
02 and follow spoken instructions; and no use of any prescribed assistive devices. (AR 16 (citing
03 AR 168-75).) At hearing, plaintiff testified she was attending school, four days a week, seven
04 hours a day, and that she did not find school stressful. (*Id.*) The ALJ additionally considered,
05 with notation to several examples as support, the possibility of secondary gain. (*Id.*)

06 The ALJ also took into consideration a lay report from plaintiff’s friend. (AR 16.)
07 The lay witness indicated, *inter alia*, that she saw plaintiff twice a week to grocery shop and
08 chat, that plaintiff attended church and watched television, but socialized mostly on the phone,
09 and that, while any physical tasks elicited pain, discomfort, and limited walking, plaintiff did
10 not have a problem paying attention and following spoken instructions, and could handle stress
11 and changes in routine “pretty well.” (*Id.* (citing AR 176-83).) The ALJ found plaintiff’s
12 activities “relatively unlimited[,]” and took note of the lay witness’s “repeated statements that
13 she was unaware of [plaintiff’s] daily activities[]” to “reduce[] the validity of the overall
14 report.” (*Id.*) The ALJ sufficiently assessed the lay testimony. *See Van Nguyen v. Chater*,
15 100 F.3d 1462, 1467 (9th Cir. 1996) (lay witness testimony as to a claimant’s symptoms or how
16 an impairment affects ability to work is competent evidence and cannot be disregarded without
17 comment) and *Smolen v. Chater*, 80 F.3d 1273, 1288-89 (9th Cir. 1996) (the ALJ can reject the
18 testimony of lay witnesses only upon giving germane reasons).

19 The ALJ likewise properly considered the medical record. In addition to the earlier
20 outline of medical records (AR 13), the ALJ considered medical opinion evidence. He first
21 took note of an April 2007 letter from plaintiff’s treating physician, Dr. Janelle Walhout, stating
22 plaintiff could resume “full duty” work after a car accident. (AR 17 (citing AR 239).) The

01 ALJ weighed the assessment “heavily” given Dr. Walhout’s treatment of plaintiff, and the
02 opinion that plaintiff “could return to work as of 2007, which is supported by the record.” (*Id.*)
03 The ALJ appropriately assigned weight to the opinion of this treating physician. *Lester v.*
04 *Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (an ALJ must, as a general matter, give more weight to
05 the opinions of treating physicians than to non-treating physicians, and more weight to the
06 opinion of an examining physician than to a non-examining physician).

07 The ALJ next considered evidence from non-examining state agency physicians. Dr.
08 Christy Ulleland, in June 2009, found plaintiff’s allegations of back problems and headaches
09 non-severe due to testing showing plaintiff was neurologically intact, normal April 2009 x-rays
10 of cervical and lumbar spines, and improvement in her migraines with medication. (AR 17;
11 AR 340.) Dr. Diane Fligstein, in a March 2009 psychiatric review, found plaintiff’s activities
12 of daily living “unlimited,” noting her ability to care for her five children, her cooking and
13 laundry responsibilities, and her ability to shop and spend time with others, including going to
14 lunch. (AR 17 (citing AR 310-22).)³ As observed by the ALJ, Dr. Fligstein took note of the
15 fact that, on the daily activities form completed, plaintiff “checked no boxes indicating mental
16 limitations and stated she followed instructions well and was able to get along with authority
17 figures.” (*Id.*) The ALJ further noted: “Regarding the evidence of financial stress,
18 physical/back pain and being unemployed, resulting in depression, Dr. Fligstein opined these
19 feelings seemed normal in this context. Overall, the evidence did not establish significant

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21 3 While the narrative portion of this Psychiatric Review Technique form was written by an
22 agency adjudicator, the ALJ properly considered the information as Dr. Fligstein’s opinion given that
she signed the form and edited the narrative content. (AR 310, 322.) See *Lawrence v. Astrue*,
C09-1368Z, 2010 U.S. Dist. LEXIS 75529 at *2-3 (W.D. Wash. July 27, 2010) (where form affirmed by
physician in its entirety, ALJ obligated to consider it as opinion evidence).

01 psychiatric limitations; therefore, the mood disorder was rated as nonsevere.” (*Id.*) Dr. R.
02 Eisenhauer, in June 2009, affirmed Dr. Fligstein’s assessment. (*Id.* (citing AR 341).)

03 The ALJ gave the state assessments “significant weight” because they were based on a
04 review of the record, had the support of the evidence, and given the assessors’ familiarity with
05 Social Security Regulations, and agreed that plaintiff’s impairments are nonsevere. (*Id.*)
06 Again, the ALJ properly afforded weight to the opinions of these physicians. *See* 20 C.F.R. §§
07 404.1527(f)(2)(i), 416.927(f)(2)(i) (“State agency medical and psychological consultants and
08 other program physicians, psychologists, and other medical specialists are highly qualified
09 physicians, psychologists, and other medical specialists who are also experts in Social Security
10 disability evaluation. Therefore, [ALJs] must consider findings and other opinions of State
11 agency medical and psychological consultants and other program physicians, psychologists,
12 and other medical specialists as opinion evidence, except for the ultimate determination about
13 whether you are disabled (see § 404.1512(b)(8)).”); SSR 96-6p (same).

14 Finally, the ALJ performed the required functional assessment for evaluating mental
15 disorders. *See* 20 C.F.R. part 404, Subpt. P, Appx. 1. He concluded plaintiff had mild
16 limitations in activities of daily living, in social functioning, and in concentration persistence
17 and pace, and no episodes of decompensation. (AR 17-18.)

18 In summarizing his conclusion that plaintiff’s impairments are nonsevere, the ALJ
19 pointed to the lack of objective medical evidence support in the record and the absence of
20 evidence showing a sufficient durational requirement of twelve months. (AR 17-18.) He also
21 deemed his conclusion as to an absence of impairments or combination of impairments
22 significantly limiting plaintiff’s ability to perform basic work activities as supported by the

01 evidence in the record and the testimony. (*Id.*)

02 Plaintiff fails to raise any arguments undermining the ALJ's conclusion. She does not
03 identify any ambiguity that would have triggered the duty of the ALJ to develop the record
04 further, and no such ambiguity is apparent from review of the record. *Cf. Webb v. Barnhart*,
05 433 F.3d 683, 687 (9th Cir. 2005) ("The ALJ's duty to supplement a claimant's record is
06 triggered by ambiguous evidence, the ALJ's own finding that the record is inadequate or the
07 ALJ's reliance on an expert's conclusion that the evidence is ambiguous. Here, the medical
08 evidence was sufficiently ambiguous to trigger the ALJ's duty because of the obvious
09 vicissitudes in Webb's health, particularly the ways in which his conditions improved and
10 worsened as a result of the afflictions and their treatments."; also finding the ALJ's reasons for
11 rejecting the claim at step two "not substantial enough to meet the 'clear and convincing'
12 standard when balanced against Webb's doctors' contemporaneous observations, some
13 objective tests and Webb's subjective complaints.") (internal citation to *Tonapetyan*, 242 F.3d
14 at 1150). Instead, as argued by the Commissioner, the ALJ's decision has the support of
15 substantial evidence.

16 **CONCLUSION**

17 For the reasons set forth above, this matter is AFFIRMED.

18 DATED this 31st day of July, 2012.

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21 Mary Alice Theiler
22 United States Magistrate Judge